

REMARKS

The final Office Action mailed December 20, 2007, has been carefully reviewed. The claims in the application remain as claims 11, 12, 14-19, 21 and 22, and these claims define patentable subject matter warranting their allowance. Applicants respectfully request favorable reconsideration, entry of the amendments presented above and formal allowance.

Applicants respectfully request withdrawal of the finality of the Office Action of December 20, 2007, on the basis that such finality was premature. This is so because claim 19 was improperly not examined previously, and only received its first rejection in the Office Action of December 20, 2007. Applicants believe and submit that it is improper to finally reject a claim previously present in the application, which claim should have been examined earlier, but was not examined do to a PTO error.

Applicants propose to amend the main claim 11 to more clearly specify that the layer encapsulating the substrate is a "single" layer, consistent with earlier claim language. Thus, claim 11, prior to the Amendment of October 9, 2007, used the closed "consisting of" language together with "a layer". This is also consistent with the original abstract and original claim 1, as well as original claim 3

referring to "**the** layer", whereby the above amendment does not raise any new issues.

Additional support appears in applicants' specification in the 4th paragraph on page 3 ("a metallic substrate has a layer..., wherein said layer ... provides a barrier effect..."), corresponding to paragraph [0011] of the publication 2007/0172438 of the present application. Further support can be found, for example, in paragraph [0013] ("the surrounding layer") and in paragraph [0014] ("The layer").

Claims 11, 14 and 15 have been rejected as obvious under Section 103 from newly cited Schmid et al USP 5,624,486 (Schmid). This rejection is respectfully traversed.

There should be no question whatsoever that applicants' claims 11, 14 and 15 define not only novel subject matter over Schmid, but also non-obvious subject matter. This is so at least for the reason that Schmid clearly requires at least a double coating over the pigment core or substrate, whereas the present invention uses a metal-effect pigment having only a single layer. Applicants have in effect flown in the face of Schmid, and done what Schmid said not to do.

In more detail, Schmid relates to (see the title) "**multiply** coated metallic **luster** pigments" (*emphasis added*), having a core, "a first layer consisting essentially of silicon oxide, aluminum oxide and/or aluminum oxide hydrate",

and "a second layer consisting essentially of metal and/or non-selectively absorbing metal oxide" (abstract; column 1, lines 7-11; column 2, lines 43-50).

It is conventional to use "luster" (or pearlescent) pigments in cosmetics. Although cosmetics are not emphasized in Schmid, they are mentioned (column 1, line 58) among the many products (column 1, lines 51-58) with which the Schmid luster pigments can be used, security printing inks being emphasized by Schmid.

The idea in luster or pearlescent pigments, and the reason that such pigments have at least two coating layers, is to provide something of a three-dimensional or pearlescent effect, with light being reflected and partially transmitted through an uppermost layer and reflected by a layer therebeneath. Attention is respectfully invited to the third paragraph on page 1 of applicants' specification:

[The] color-imparting and effect-imparting means [typically used in the prior art] may be colorants, lacquered organic colorants, inorganic or organic pigments and/or effect pigments, wherein especially in case of the effect pigments, special emphasis lies on the desire to attain a different color impression or brightness impression depending on the viewing angle of the applied preparation. To achieve this purpose, pearlescent pigments in particular have conventionally been used in the field of cosmetics. [bracketed material added]

And in the following paragraph which spans pages 1 and 2 of applicants' specification:

Pearlescent pigments are based on flake-shaped mica particles as a substrate, which are coated with metal oxides,... Pigments of this type on the basis of titanium oxide, however, are relatively transparent due to their composition and, as a rule, exhibit a color impression only at the so-called "glancing angle", whereas pigments that are based on iron oxide do provide more coverage, but the angle-dependent color impression or brightness impression is pushed to the background.

In the present invention, the cosmetic is provided with what can be called a metal-effect pigment, i.e. a pigment containing a metallic core and a single layer of silicon dioxide, i.e. only one silicon dioxide layer.

Other advantages are also achieved in an unexpected way by use of the single layer metal-effect pigments in the cosmetic formulations of the present invention. Thus, the present applicants surprisingly found out that it is possible to provide metal effect pigments having a particular resistance against sweat and saliva, even though encapsulated in only one single layer of barrier material. An object of the present invention was to provide metal effect pigments which can be used in the field of cosmetics and which are especially resistance against sweat and saliva.

The thinner the barrier layer, the higher the specific coverage of the metal effect pigments, it being

understood that coverage is based on the weight of the pigments. The specific coverage is conferred by the plate-like metallic particle having only a single layer. Applying a transparent or semi transparent barrier layer thereabove (as a second or third or fourth layer) as is typical in the prior art, leads to a reduced coverage. Again, please note that Schmid uses at least two layers over the substrate, and optionally a third layer which is essentially colorless.

In the present case, it was surprising that a pigment having a single thin barrier layer could be used, thereby maintaining the specific coverage of the metal effect pigments, and simultaneously providing the required resistance against sweat and saliva.

As Schmid clearly teaches those skilled in the art to provide lustrous pigments, and as such lustrous pigments must have at least two layers, and as applicants' cosmetic preparations use metal effect pigments having but a single layer over the core or substrate, it is clear that Schmid would have led the person of ordinary skill in the art away from rather than towards the present invention. As applicants' claims 11, 14 and 15 define non-obvious subject matter over Schmid, the rejection should be withdrawn, and such is respectfully requested.

Claims 12, 16, 17, 21 and 22 have been rejected under Section 103 as obvious from Schmid in view of Takahashi (previously applied). This rejection is respectfully traversed.

First, Takahashi has not been cited to make up for the deficiencies of Schmid as pointed out above, and indeed Takahashi does not do so. As claims 12, 16, 17, 21 and 22 depend from claim 11, these claims incorporate the features of claim 11 and are therefore patentable for at least the reasons pointed out above.

It may be additionally pointed out that Takahashi, like Schmid, also discloses and teaches pigments having plural layers including "a semi-transparent thin metal film to enhance the interference color of the pigment" (abstract of Takahashi).

Even if assuming *ad arguendo* that it were obvious to combine Schmid and Takahashi, e.g. modify Schmid in some way according to the teachings of Takahashi, the resultant reconstruction of Schmid would still have plural layers over the substrate or core, and thus not correspond to the claimed subject matter.

Withdrawal of the rejection is in order and is respectfully requested.

Claim 18 has been rejected as obvious under §103 from Schmid in view of Takahashi and further in view of Yamazaki et al USP 4,897,261 (Yamazaki) and Kuwata et al USP 4,894,224 (Kuwata). And claim 19 has been rejected as obvious under Section 103 from Schmid in view of Takahashi and Yamazaki and Kuwata and further in view of Forestier et al USP 5,089,250 (Forestier). These rejections are respectfully traversed.

Claims 18 and 19 depend directly or indirectly from claim 11 and thus incorporate the subject matter of claim 11, and therefore these claims are patentable at least for the same reasons as claim 11, as pointed out above. None of Yamazaki, Kuwata and Forestier have been cited to make up for the aforementioned deficiencies.

Yamazaki is concerned with elements of a fingernail cosmetic composition which do not concern the pigment, the latter of which is hardly mentioned. Kuwata appears to disclose no more, and possibly less with respect to pigments; and the same is true with respect to Forestier. Therefore, even if it were obvious, *ad arguendo*, to combine the references as proposed, the resultant combinations would not even meet claim 11, let alone any of the claims which depend therefrom.

Withdrawal of these rejections is also in order and is therefore respectfully requested.

The additional newly cited prior art documents made of record and not relied upon have been noted, along with the implication that these are deemed by the PTO to be insufficiently pertinent to warrant their application against any of applicants' claims.

Favorable reconsideration, entry of the amendments presented above, withdrawal of the finality of the office action, and formal allowance are respectfully urged.

Respectfully submitted,

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